

UNITED STATES DISTRICT COURT

for the

Northern District of California

FILED

Jun 30 2023

Mark B. Busby
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

United States of America)

v.)

Freddie Lee DAVIS III)

and)

Sene MALEPEAI)

Case No. 4:23-mj-70989-MAG

Defendant(s)

FILED UNDER SEAL**CRIMINAL COMPLAINT**

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of June 19, 2021 in the county of Alameda in the
Northern District of California, the defendant(s) violated:*Code Section**Offense Description*

18 U.S.C. § 1343

Wire Fraud

Maximum 20 years of imprisonment; maximum fine of \$250,000; maximum term of supervised release of 3 years; mandatory \$100 special assessment

18 U.S.C. § 1028A

Aggravated Identity Theft

Minimum consecutive 2 years of imprisonment; maximum fine of \$250,000; maximum term of supervised release of 1 year; mandatory \$100 special assessment

This criminal complaint is based on these facts:

Please see the attached affidavit of FBI Special Agent Kyle Biebesheimer

☒ Continued on the attached sheet.Approved as to form /s/
AUSAs Eric Cheng/Molly Priedeman/s/ Kyle Biebesheimer*Complainant's signature*Kyle Biebesheimer, FBI Special Agent*Printed name and title*

Sworn to before me by telephone.

Date: 06/30/2023*Judge's signature*City and state: Oakland, CaliforniaHon. Donna M. Ryu, Chief Magistrate Judge*Printed name and title*

SEALED BY ORDER OF THE COURT

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I. INTRODUCTION

1. I submit this affidavit in support of an application under Rules 3 and 4 of the Federal Rules of Criminal Procedure for a criminal complaint and arrest warrants for

FREDDIE LEE DAVIS III (“DAVIS”) and
SENE MALEPEAI (“MALEPEAI”).

For the reasons set forth below, I submit there is probable cause to believe that DAVIS and MALEPEAI violated 18 U.S.C. § 1343 by engaging in wire fraud and 18 U.S.C. § 1028A by engaging in aggravated identity theft, during and in relation to wire fraud in violation of 18 U.S.C. § 1343.

2. I submit this affidavit for the limited purpose of securing a criminal complaint and arrest warrants. I have not included every fact known to me concerning the investigation. Instead, I have set forth only the facts to establish probable cause that violations of the federal law identified have occurred.

3. I have based my statements in this affidavit on my training and experience, personal knowledge of the facts and circumstances obtained through my participation in the investigation, information provided to me by other agents and law enforcement officers, information provided by reports of other law enforcement, information provided by audio and video recording evidence, as well as visual and photographic evidence, and information provided by records and databases. Where I refer to conversations and events, I often refer to them in substance and in relevant part rather than in their entirety or verbatim, unless otherwise noted. This affidavit reflects my current understanding of facts relating to this investigation. That understanding may change as the investigation proceeds.

II. AFFIANT BACKGROUND

4. I have been a Special Agent with the Federal Bureau of Investigation (“FBI”) since April 2, 2010. I am currently assigned to the Public Corruption & Civil Rights Squad in the San Francisco Field Office. In this capacity, I have investigated and assisted other agents in

investigating civil rights violations, including both color of law violations and crimes of bias (hate crimes). From February of 2017 to August of 2018, I served as a Supervisory Special Agent (SSA) at FBI Headquarters where I worked in the Counterterrorism Division assisting program managers with high profile counterterrorism investigations. From 2010 to 2016, I served as an agent on San Francisco's Joint Terrorism Task Force (JTTF) where I worked on domestic terrorism matters, including investigations of white supremacy extremists.

5. I am an investigator and law enforcement officer of the United States within the meaning of 18 U.S.C. § 2510(7). I am empowered by law to conduct investigations, to execute search warrants, and to make arrests for offenses of federal law.

III. APPLICABLE STATUTES

6. Title 18, United States Code, Section 1343 (wire fraud) in pertinent part states “Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both.”

7. Title 18, United States Code, Section 1028A (aggravated identity theft) in pertinent part states “Whoever, during and in relation to any felony violation enumerated in subsection (c),¹ knowingly transfers, possesses, or uses, without lawful authority, a means of identification of another person shall, in addition to the punishment provided for such felony, be sentenced to a term of imprisonment of 2 years.”

IV. FACTS SUPPORTING PROBABLE CAUSE

8. Over the past three years, I have been investigating violent criminal acts targeting members of the Asian American Pacific Islander (AAPI) community in and around Alameda

¹ Subsection (C)(5) delineates certain applicable felonies, including “any provision contained in chapter 63 (related to mail, bank, and wire fraud). . . .”

County. Many of these crimes involved strong arm robberies occurring at places of public accommodation, such as commercial shopping centers.

9. Through my training and experience, I have learned that strong arm robberies are often perpetrated by small groups, known as “crews.” Within these crews, each participant typically performs a certain task, e.g., driver, lookout, robber, etc. By working together as a team, each crew is able to maximize their volume of robberies committed while minimizing their risk of apprehension by law enforcement.

10. Through my investigative experience, I have learned that in and around Alameda County, certain individuals that commit violent crimes may share a perception that Asians are more desirable victims and may therefore target Asian victims in carrying out these crimes. It is also my understanding that this perception is based upon several beliefs or generalizations about Asians held by those who have committed violent crimes in which Asian victims appear to have been targeted: (a) they carry large amounts of cash; (b) they do not fight back; (c) they do not report their victimization to law enforcement (e.g., because of their immigration status, their perceived lack of proficiency communicating through use of the English language, cultural differences, etc.); and (d) they tend to gather in predictable locations.

Robbery at San Leandro Costco on June 17, 2021

11. On June 17, 2021, San Leandro Police Department (SLPD) officers responded to a report of a robbery in the parking lot outside Costco, located at 1900 Davis Street in San Leandro, California. The victim of the robbery was an Asian female, identified as Q.D.

12. The robbery occurred in the store’s parking lot after she exited Costco with her mother. As she was walking to her vehicle, a car drove alongside her. According to Q.D.’s statements to SLPD, an individual reached out of a rear window and grabbed hold of Q.D.’s purse from the moving car. Q.D. held on to her purse and was dragged the width of several cars. The car then sped away and she let go of her purse. When Q.D. released her grasp on the purse she fell violently to the ground, resulting in bodily injuries, namely abrasions to her leg as well as swelling on her hand. Several witnesses heard Q.D. scream, heard her body hit the asphalt,

and saw a black Honda speed away from the incident.

13. During the robbery, Q.D.'s purse was stolen, which included two cell phones, a PayPal MasterCard credit card, and approximately \$1,800 in cash.

14. In the days following the robbery, Q.D. noted nearly a dozen unauthorized transactions on her stolen credit card, including a \$98.78 charge at Foot Locker in San Leandro, California on June 19, 2021.

Surveillance Footage from Costco on June 17, 2021

15. Parts of the robbery were captured on Costco's surveillance cameras. The footage revealed that the suspect vehicle was a black Honda Accord, with a license plate number that was registered to DAVIS.

16. The video surveillance footage captured the subject vehicle approaching Q.D. from behind. It also captured the vehicle speeding away, and Q.D. falling to the ground. A screenshot from the video is below. The suspect vehicle is circled, and the arrow is pointed at Q.D., who is on the ground.



Surveillance Footage from San Leandro Foot Locker on June 19, 2021

17. Law enforcement obtained surveillance camera footage capturing purchases made at the San Leandro Foot Locker on June 19, 2021, during the time that Q.D.'s stolen credit card was utilized. The footage revealed that on approximately June 19, 2021 at 2:30 pm, a black male matching the description of DAVIS and a female, later identified as MALEPEAI, approached the register. MALEPEAI fraudulently purchased a pair of Nike Air Force 1 shoes for \$98.78 and charged them to Q.D.'s stolen credit card. MALEPEAI then handed the credit card to DAVIS, who placed the card inside his pant pocket. Thereafter, the two individuals left the store.

Screenshots from the surveillance footage are shown below.



18. MALEPEAI's use of Q.D.'s credit card caused an interstate wire communication. The wire transfer was initiated in the Northern District of California when the purchase was initiated, and, based on my communications with Fiserv, Inc., the company responsible for facilitating the payment, the payment was sent from San Leandro, California to a server located in the state of Arizona.

Search of DAVIS' Vehicle

19. On June 24, 2021, SLPD detectives arrested DAVIS while he was attempting to leave a parking lot in San Leandro in the same black Honda Accord that was used in the robbery at Costco. MALEPEAI was in the vehicle at the time of DAVIS' arrest.

20. SLPD conducted a search of DAVIS' car and recovered Q.D.'s wallet on the front passenger's floorboard, where MALEPEAI had been seated. SLPD also seized Q.D.'s stolen credit card from DAVIS' person. In addition, both MALEPEAI and DAVIS' cell phones were seized.

Audio Recorded Statements of MALEPEAI

21. Audio recordings captured on June 24, 2021 and July 8, 2021 contained numerous statements by MALEPEAI related to this incident and other incidents.

22. MALEPEAI stated that she was in a romantic relationship with DAVIS and that she was in the front passenger seat of DAVIS' car during the June 17, 2021 robbery at Costco. She identified DAVIS as the driver during the robbery. She identified the driver side rear passenger as R.T. and the passenger side rear passenger as E.S.

23. MALEPEAI stated that the day of the robbery, DAVIS, E.S., and R.T., had discussed going to Chinatown to rob Asian women with purses or jewelry. MALEPEAI stated that they first drove to Chinatown to look for Asians with purses, then went to a Walmart parking lot, and eventually ended up at the San Leandro Costco. MALEPEAI stated that she was aware that R.T. and E.S. had a preference for robbing Asians because they talked about robbing Asians, and she had seen a news article about a robbery of an Asian individual committed by R.T. MALEPEAI stated that E.S. and R.T. like to rob Asian females because they think they have more money, and because Asians are "easy targets" who don't fight back.

24. MALEPEAI stated that the day of the robbery at Costco, they first tried to steal another woman's purse in the parking lot, but when they approached the woman, she saw the car, and pulled her purse away.² MALEPEAI stated that when she saw Q.D., she knew that R.T. and E.S. were going to want to rob her. She further stated that it was E.S. who reached out the window and grabbed Q.D.'s purse. After E.S. took Q.D.'s purse, MALEPEAI stated that they divided up the stolen goods, but MALEPEAI did not take any of the proceeds. She further claimed that she was not aware that DAVIS kept Q.D.'s credit card.

25. MALEPEAI stated she used Q.D.'s credit card at Foot Locker on June 19, 2021 to purchase the Nike shoes, but claimed she did not know the credit card was stolen.

Historical Cell Site Data

26. Law enforcement obtained historical cell site data associated with MALEPEAI's,

² The Costco video surveillance from the day of the robbery corroborates MALEPEAI's recounting of the day of the robbery. The video shows the subject vehicle approaching a female from behind in the parking lot, prior to the robbery of Q.D. The video shows a black male reaching most of his body out of the window in what looks like an attempt to grab the woman's purse. The woman then moves to the side, and the suspect vehicle drives past her.

DAVIS', E.S., and R.T.'s cell phones pursuant to a federal warrant.

27. The data demonstrates that all four individuals' cell phones were together on the afternoon of June 17, 2021, and consistent with MALEPEAI's statements, were used in locations corresponding with the following destinations: Oakland's Chinatown; Oakland's Little Saigon; Walmart, San Leandro; Costco, San Leandro. The analysis demonstrates that all four devices appear to have been near the San Leandro Costco at the time of the robbery.

Review of MALEPEAI's Cell Phone

28. Law enforcement reviewed MALEPEAI's and DAVIS' cell phones pursuant to a federal warrant. The review revealed the following relevant content:

- a. On June 4, 2021, MALEPEAI asked DAVIS to loan her money. DAVIS responded that he had a "negative" bank account balance. A few hours later, he told MALEPEAI that he was going to go "hit" with R.T. In MALEPEAI's July 8, 2021 audio recorded statements, she stated that "hit" means to steal or rob.
- b. On June 8, and 14, 2021, MALEPEAI messaged several individuals stating that she was going to go "hit." On June 15, 2021, two days prior to the robbery at Costco, she told an unidentified individual that she was going to go "hit" to obtain money to buy a car.
- c. On June 18, 2021, the day after the robbery, MALEPEAI texted DAVIS and asked if he had used "the card." Here, I believe MALEPEAI may have been referencing funds from Q.D.'s stolen credit card, as Q.D. reported unauthorized purchases on her card that day.
- d. On June 19, 2021, the same day that MALEPEAI used Q.D.'s credit card to buy a pair of shoes, MALEPEAI saved a video on her phone of two shopping bags, including a Foot Locker bag, that appear to contain shoe boxes, with the caption "Came up ↑" superimposed atop the video. In my training and experience, I know that the term "came up" refers to a rise in rank or status. Here, I believe MALEPEAI was referencing the influx in money and new items she was experiencing as a result of the proceeds of the robbery at Costco.

V. REQUEST TO SEAL

29. Since the investigation is continuing, I request that this affidavit be sealed until such time as the Court directs otherwise. Disclosure of the affidavit at this time would seriously jeopardize the ongoing investigation, as such disclosure may provide an opportunity to destroy evidence, change patterns of behavior, notify confederates, or allow co-conspirators to flee or continue flight from prosecution.

VI. CONCLUSION

30. Based on my training and experience, and the facts as set forth in this affidavit, I submit that there is probable cause to believe that DAVIS and MALEPEAI have violated Title 18 United States Code, Sections 1343 and 1028A. Accordingly, I respectfully request that the Court issue a criminal complaint and arrest warrants for DAVIS and MALEPEAI.

/s/ Kyle Biebesheimer
KYLE BIEBESHEIMER
Special Agent
Federal Bureau of Investigation

Sworn to before me over the telephone and signed by me pursuant to Fed. R. Crim. P. 4.1 and 4(d) on this 30th day of June, 2023.



HONORABLE DONNA M. RYU
Chief Magistrate Judge